


COUNTY OF YORK MEMORANDUM

DATE: March 20, 2000 (BOS Mtg. 04/04/00)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney 

SUBJECT: Condemnation of Property of G-Square, Inc.-
Modification to Resolution R99-228 adopted 12/01/99

At the request of the Board, I have prepared a resolution with respect to the above referenced condemnation action now pending in the York County Circuit Court which, if adopted, will modify the proposed public use to which the subject property may be put. Previously, on December 1, 1999, this Board adopted Resolution R99-228 which authorized the acquisition of 0.88 acres owned by G-Square, Inc. located at 400 Water Street in Yorktown, by condemnation or otherwise, identifying the proposed public purpose for the property as "a public parking facility." That resolution was adopted as required by Va. Code § 15.2-1903 B which requires that any condemnation proceeding shall be authorized by a resolution or ordinance approving a particular proposed public use for the property. Likewise, as required by Va. Code § 25-46.7, the condemnation petition, which has already been filed in this matter, stated that the precise public use for which the property was proposed to be acquired is as "a public parking facility."

In recent weeks, the Board has considered whether public parking is the only proper purpose for which this particular parcel should be incorporated into the overall development of the Yorktown Waterfront, and has suggested to this office that it may be in the public interest to adopt a resolution revising, in effect, resolution R99-228, to indicate a number of permissible public purposes to which the property may be applied. Consequently, the attached resolution identifies the proposed public purpose for the condemnation as "public parking, or as a public park or plaza, or as a place for public assembly and activity, or such other public use as the Board may determine best incorporates the property into the overall scope and intent of the Yorktown Wharf Area Improvement Plan."

Should the Board adopt the attached Resolution R00-49, this office will petition the York County Circuit Court for permission to amend the condemnation petition in order to properly set forth the amended public purpose.

For your information, the Virginia Supreme Court, in its 1972 opinion in Old Dominion Iron and Steel Corporation v. City of Richmond, ruled that it is not necessary at the time a

condemnation petition is filed, or even at the time that title to property is acquired through a condemnation proceeding, that the precise use to which property is to be applied be identified by the acquiring authority. In that case, the City of Richmond sought to acquire a portion of an island in the James River for incorporation into a master plan for the development of a large recreational facility encompassing both banks of the James River. The condemnation petition indicated that the property would be used for "restaurants and plazas, and places for mass assembly and activity." However, at the time of the Court's opinion, the City had not yet finalized its master plan in order to indicate exactly what kinds of improvements would be placed on the subject property. Nonetheless, the Virginia Supreme Court said that the City had properly demonstrated a public purpose as motivating the property acquisition. The parallels between the Old Dominion case and the facts currently before the Board with respect to the development of the Yorktown Waterfront are apparent. Consequently, I believe that the adoption of the proposed resolution and the suitable amendment of the County's pleadings in the pending condemnation action, constitute a proper statement of a valid public purpose for the subject property.

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Attachment